

Attorney's Docket: 2004DE411

Serial No.: 10/594,210

Art Unit 1798

Response to Final Office Action Mailed 07/09/2008

REMARKS

The Office Action mailed July 9, 2008 has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. Accordingly, reconsideration of the present Application in view of the following remarks is respectfully requested.

Applicant has amended the claims to more clearly recite what Applicant believes to be the invention. Claim 8 was amended to attend to formalities. It is believed that no new matter has been added by this amendment and that no additional search is required on the part of the office.

Claims 1- 8 and 10-13 were rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,521,589 to Demeyere et al. (herein after referred to as the '589 Reference). The rejection of claim 1, under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,521,589 should be withdrawn for the reason that the '589 Patent does not disclose all of the elements of Applicant's invention. The '589 Patent discloses and claims a clear liquid fabric softener composition which comprises

a) a biodegradable fabric softener compound, wherein the softener compound comprises a quaternary ammonium salt, the quaternised ammonium salt being a quaternised product of a condensation product between:

i) a fraction of saturated or unsaturated, linear or branched fatty acids, or of derivatives of said acids, said fatty acids or derivatives each possessing a hydrocarbon chain in which the number of atoms is between 5 and 21, and

ii) triethanolamine,  
characterized in that said condensation product has an acid value measured by titration of the condensation product with a standard solution against a phenolphthalein indicator, of less than 6.5 and wherein the mole ratio of i) to ii) is from 1.8:1 to 2.2:1;

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b) water; and

c) principal solvent in an amount effective to provide a clear composition (See Claim 1 and col. 2, lines 10-55, and col. 3, lines 1-5). The '589 patent fails to disclose any composition which comprises an ester quat and triethanolamine (a material of basic character), and in fact teaches away from such a combination. In the '589 Patent the triethanolamine is a starting material in the condensation reaction. The '589 Patent discloses that an essential feature of the invention is that the condensation reaction is carried out with an excess molar ratio of fatty acid to triethanolamine (at least 1.4 to 1 - See col. 3, lines 1-5 and Claim 1.), and that the condensation reaction is carried out until any basic material is completely reacted by evidence of requiring a terminal acid value of less than 6.5(See col.2, lines 10-55). This means that there is always an excess of fatty acid, and thus all of the triethanolamine is converted into the final ester quat. Consequently no residual triethanolamine is left which could function as a pH modifier in Applicant's invention remains. Clearly, anyone skilled in the art would recognize that in the '589 Patent the triethanolamine serves only as a starting material and disappears during the condensation reaction, and no final condensation product would contain any triethanolamine. Thus, the '589 Patent requires that essentially all of the triethanolamine be consumed and no residual unreacted triethanolamine remains in the final condensation product. Applicant's invention differs from the '589 Patent by requiring the presence of from 0.1 to 3 percent by weight of a pH modifier such as triethanolamine. It is fundamental that all elements of a claim must be found united in the same way to perform the identical function for a reference to establish anticipation. Anticipation is a technical defense which must meet standards: Unless all of the same elements are found in exactly the same situation and united in the same way to perform the identical function in a single prior art reference, there is no anticipation. Unless all of the elements of a claimed invention can be found in a single reference, it cannot be said that such a claim is anticipated by that reference. The '589 patent disclosure is limited to ester quat compositions which contain essentially no pH modifiers such as triethanolamine. Therefore, the rejection of claim

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1, as amended under 35 U.S.C. 102(b) as being anticipated by US 6,521,589 should be withdrawn for the reason that the '589 Patent does not disclose all of the elements of Applicant's invention. The rejection of claims 2-8 and 10-13 under 35 U.S.C. 102(b) as being anticipated by US 6,521,589 should be withdrawn for the reasons given in support of claim 1 from which they depend.

It is respectfully submitted that, in view of the above remarks the rejections under 35 U.S.C. 102 should be withdrawn and that this application is in a condition for an allowance of all pending claims. Accordingly, favorable reconsideration and an allowance of all pending claims are courteously solicited.

An early and favorable action is courteously solicited.

Respectfully submitted,



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